STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	**:**	
	:	
Petition for expedited approval of	**:**	**00-0259**
implementation of a market-based	**:**	
alternative tariff, to become	**:**	
effective on or before May 1, 2000,	**:**	
pursuant of Article IX and Section	**:**	
16-112 of the Public Utilities Act.	**:**	

INTERIM ORDER

DATED: April 27, 2000

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INTERIM ORDER

By the Commission:

I. PROCEDURAL HISTORY

In a petition filed on March 31, 2000, Commonwealth Edison Company ("Edison" or "ComEd") seeks an order under Article IX and Section 16-112 of the Public Utilities Act ("Act") approving the implementation of tariffs, to be effective May 1, 2000, incorporating an alternative "market based" methodology which is intended to replace the "neutral fact finder" ("NFF") process currently in use. Edison says it wants such an order entered on or before April 27, 2000, with the tariffs filed pursuant to that order to be effective May 1, in part because May 1 is the first date of the June 2000 billing cycle under the tariffs to be implemented if its proposal is approved. The tariffs which Edison is proposing to make effective on May 1 are attached to the petition as Exhibit B.

Intervening petitions have been filed by Abbot Industries, Inc., A. Finkl & Sons, Caterpillar Inc., Daimler Chrysler Corporation, Ford Motor Company, Modem Drop Forge Company, Monsanto Company, Motorola, Inc., Nabisco Brands, Inc., Northwestern Steel & Wire Company, R. R. Donnelly & Sons, Viskase Corporation, and Owens-Illinois, Inc., as the Illinois Industrial Energy Consumers ("IIEC"); Enron Energy Services, Inc. ("Enron"); Peoples Energy Services, Inc. ("PE Services"), Nicor Energy, L.L.C. ("Nicor Energy"); NewEnergy Midwest, LLC ("NewEnergy"); Midwest Independent Power Producers Coordination Group ("MWIPS"); Central Illinois Light Company ("CILCO"); Illinois Power Company; the Attorney General of the State of Illinois on behalf of the People of the State of Illinois ("AG"); Sieben Energy Associates ("Sieben"); CMS Marketing, Services and Trading ("CMS Marketing"); MidAmerican Energy Company ("MEC"); Central Illinois Public Service Company ("CIPS"); Union Electric Company ("UE"); the People of Cook County; Unicom Energy, Inc. ("Unicom Energy"), and the Citizens Utility Board. A written entry of appearance was filed by the City of Chicago. All petitions for leave to intervene are granted, subject to other rulings in this proceeding.

On April 5, 2000 a notice was served which gave potential parties an opportunity to file responses to the scheduling proposal contained in Edison's petition. As noted above, Edison's schedule calls for a Commission order by April 27. Comments in response to Edison's proposed schedule, and replies thereto, were filed by various parties on April 10, 2000 and April 11, 2000.

In their responses, the IIEC, MWIPS, the Commission Staff, CMS Marketing, and Enron opposed the schedule proposed by Edison. These parties' objections to Edison's proposed schedule were summarized in a memorandum to the Commission dated April 11, 2000. On April 12, 2000, the Commission in conference determined that a schedule should be implemented which would result in a proposed order being provided to the Commission by April 27, 2000 for its consideration and/or action prior to May 1, 2000 as requested by Edison.

Pursuant to written notice, a prehearing conference was held at the Commission's offices at Springfield, Illinois, on April 13, 2000, and a telephone hookup was made available at the Commission's offices in Chicago, Illinois. Appearances at this hearing were entered by Edison; by the Commission Staff; by the City of Chicago; and by the filers of intervening petitions listed above except for CIPS, UE and Sieben. Pursuant thereto, a procedural schedule was put in effect on April 13, 2000. Pursuant to that schedule, verified comments, supported by affidavit, were filed by on April 18, 2000 by IIEC, Enron, Staff, CILCO, Nicor Energy, and New Energy in which these parties set forth their positions in this case. Comments were also filed by MEC, CMS Marketing, PE Services, the AG, Unicom Energy and the City of Chicago. Except as otherwise noted, all comments filed by the parties were docketed, are part of the record, and have been duly considered in reaching a decision in this proceeding. Also, those comments which are in verified form, be they in the form of prepared testimony supported by affidavit, narrative statements supported by affidavit, or comments supported by affidavit, are deemed part of the evidence of record in this proceeding. In addition, written responses to questions posed by Chairman Mathias were filed by ComEd, IIEC, Enron, New Energy, Nicor Energy, CIPS and UE, Unicom Energy and PE Services.

On April 21, 2000, a Hearing Examiner's Proposed Order ("also referred to as "proposed order" or "HEPO") was served on the parties. Exceptions were filed by ComEd, IIEC, Enron, the AG, PE Services, NewEnergy, Nicor Energy, CMS Marketing, Unicom Energy, Sieben, MEC and the Staff. Replies to exceptions were filed by ComEd, IIEC, Enron, the AG, PE Services, NewEnergy, Nicor Energy, CMS Marketing, CILCO and the Staff.

II. COMED'S PROPOSAL

A. Nature of Proposal; Statutory Authority

ComEd says that its proposal is based upon the use of what it describes as market indices that reflect market values for the price of energy bought and sold in the "Into ComEd" hub, and is being filed pursuant to Article IX and Section 16-112 of the Act. In support of its proposal, ComEd submitted the prepared testimony, with affidavits, of Arlene Juracek, David Nichols, and Paul Crumrine.

Section 16-112 of the Act is entitled "Determination of Market Value." Section 16-112 (a) provides in part, "The market value to be used in the calculation of transition charges . . . shall be determined in accordance with either (i) a tariff that has been filed by the electric utility . . . pursuant to Article IX of this Act and that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy, or (ii) in the event no such tariff has been placed into effect . . . , or in the event such tariff does not establish market values for each of the years specified in the neutral fact finder [NFF] process described in subsections (b) through (h) of this Section, a tariff incorporating the market values resulting from the . . . NFF process set forth in subsections (b) through (h) of this Section."

Section 16-112 (m) provides in part, "The Commission may approve or reject, or propose modifications to, any tariff providing for the determination of market value that has been proposed by an electric utility pursuant to subsection (a) of this Section, but shall not have the power to otherwise order the electric utility to implement a modified tariff or to place into effect any tariff for the determination of market value other than one incorporating the neutral fact-finder procedure set forth in this Section."

B. Determination of Market Values

ComEd proposes that Into ComEd market values would be determined using forwards transaction prices along with bid/ask prices from transactions on Altrade™ and Bloomberg PowerMatch, which ComEd asserts are two real time, online electronic trading exchanges which post Into ComEd forward market prices. According to ComEd, these forwards prices would be used to quantify values for the peak period as this is the most volatile pricing period. Under this methodology, ComEd says market values would be obtained twice a year, in March and June. ComEd states that daily weighted average transaction prices, or when necessary "best market" bid/ask midpoints, would be recorded for each given forward delivery period. Under ComEd's proposal these daily "snapshots" would be averaged over a period of twenty consecutive business days ending March 22 and June 22 to arrive at estimated on-peak market prices for each of the two periods identified below.

ComEd proposes, for off-peak pricing, to utilize historical day-ahead data from "Power Markets Week's *Daily Price Report"* published by McGraw-Hill for the most representative region for ComEd's service territory (currently Northern MAIN, according to ComEd). ComEd says the off-peak prices from "Power Markets Week's *Daily Price Report*" would provide monthly a range of values of historical prices based on day-ahead quotes. These quotes, according to ComEd, are based on surveys taken for transactions on weekdays. ComEd states that the simple average of low-high daily price quotes would be used to establish a monthly average price. Under ComEd's proposal, hourly prices would be developed for each monthly on-peak and off-peak period as described below.

C. Development of Hourly Price Shapes

ComEd proposes that Locational Marginal Price data from the 1999 PJM-West (Pennsylvania, New Jersey, Maryland) Interconnection be used to develop hourly price shapes for each monthly peak and off-peak period. According to ComEd, there already exist hourly PJM-West price data for the 8760 hours in 1999. By using an hourly price shape, ComEd claims that one can translate an average block price into hour-by-hour market values.

For each month in 1999, two scalars would be determined under ComEd's proposal. ComEd says that the first monthly scalar ("Peak Scalar") is the ratio of the Peak Index for that month and the simple average of the hourly PJM-West prices in the same month for the hours from 6:00 a.m. to 10:00 p.m. from Monday through Friday, exclusive of North American Electric Reliability Council ("NERC") holidays. The second scalar ("Off-Peak Scalar"), according to ComEd, is the ratio of the Off-Peak Index for that month and the simple average of the hourly PJM-West prices in the same month for the hours from 12:00 a.m. to 6:00 a.m. and from 10:00 p.m. to 12:00 a.m. from Monday through Friday, exclusive of NERC holidays.

ComEd says that for each month in 1999, each of the 8760 hourly PJM-West prices would be multiplied by one of these two scalars. Hourly prices for each month for the hours from 6:00 a.m. to 10:00 p.m. from Monday through Friday, exclusive of NERC holidays, would be multiplied by the respective Peak Scalar for that month. All other hours in each month would be multiplied by the respective Off-Peak Scalar for that month, under the ComEd proposal. At this point, ComEd claims that the twelve values for the Peak Index and the Off-Peak Index will have been expanded and shaped into 8760 hourly prices based on the hourly shape of prices from the 1999 PJM-West price data. These resulting hourly prices, ComEd avers, would represent the system market values which correspond with typical system loads for the same periods.

In order to calculate prices that are applicable to the individual customer, ComEd says transmission and distribution losses must be included. The effect of losses from the transmission and distribution systems would be accounted for by increasing the hourly price values. Under ComEd's proposal, the 8760 hourly values would be increased to account for system energy losses on the transmission system as specified in ComEd's Open Access Transmission Tariff ("OATT"). Each hourly value would also be increased by one of the two monthly distribution loss factors applicable to that customer class, according to ComEd. ComEd defines the appropriate distribution loss factor as either the peak period loss factor or the off-peak period loss factor, based on the definition of peak and off-peak periods contained in ComEd's retail tariffs.

Next, ComEd says the hourly price values (after this adjustment for transmission and distribution losses) would be load-weighted by multiplying each hourly value times the corresponding class hourly load from 1999. The hourly results of this multiplication, according to ComEd, would be summed for each of four time periods -- summer peak and off-peak and nonsummer peak and off-peak -- and divided by the sum of class loads for the corresponding hours to determine the seasonal time of use market value energy charges ("MVECs") for that customer class. ComEd says that the summer period in the calculation encompasses the months of June, July, August and September, while the nonsummer period contains the eight other months. ComEd defines the peak period as 9:00 a.m. through 10:00 p.m., Monday through Friday excluding certain holidays, and the off-peak period is defined as all other hours. ComEd states that seasonal non-time of use MVECs would be determined for each of the two seasons for each customer class by performing the operation using all hours in each season. In addition, ComEd says it would determine a single load weighted annual average market value for each customer class by making the calculation using all of the hours in the year.

ComEd states that all MVECs as well as the load weighted average market value (LWAMV) would include the adjustment for sales and marketing costs and the adjustment for uncollectibles for each customer class that was approved by the Commission in Docket No. 99-0117. The end result of this process, ComEd claims, will be the determination of market values for each customer class in which the hours of highest expected prices are weighted by the usage in those same hours. ComEd argues that these price shapes should provide a very accurate means to approximate each customer class' load weighted hourly market values, i.e., the average cost of expected usage. ComEd also asserts that the hourly load-weighted market values would allow for flexibility to determine each customer class' average cost for different period definitions (for designated loads, e.g., 13 hour versus 16 hour peak periods).

ComEd says it will determine MVECs, LWAMVs, and associated customer transition charges ("CTCs") twice each year. In mid-March of each year, ComEd states that values would be established for June of the current year through May of the following year. According to ComEd, additional values would be established in June of each year for September of the current year through May of the following year. ComEd says that the newly established values would be reflected in new Power Purchase Option ("PPO") rates and transition charges for periods going forward. Under ComEd's proposal, the second set of prices would apply only to customers first electing Delivery Service during those months. Thereafter in June of each year, ComEd states that all

Delivery Service customers would be subject to new market values, determined the previous March, that would then apply for the next twelve months.

Under ComEd's proposal, there will be two separate periods for each year, "Applicable Period A" and "Applicable Period B." Applicable Period A will cover a twelve month period starting with the June billing month and continuing through the following May billing month. Applicable Period B will cover a nine month period starting with the September billing month and continuing through the following May billing month. Beginning with the initial effective date of Rider PPO-Power Purchase Option (Market Index) ("Rider PPO-MI"), ComEd says customers that commence to take delivery services in the billing months of May, June, or July (i.e., first bills in the June, July, or August billing months) would pay CTCs determined for Applicable Period A. Such customers would then be subject to CTCs determined for each subsequent Applicable Period A as long as the customers continue to receive delivery service under the ComEd proposal. ComEd says that beginning with the initial effective date of Rider PPO-MI, customers that commence to take delivery services in the billing months of August through April (i.e., first bills in the September through May billing months) would pay CTCs determined for Applicable Period B. At the end of that period, ComEd states that such customers will then be subject to CTCs determined for each subsequent Applicable Period A as long as the customers continue to receive delivery service.

ComEd proposes that the updated MVECs, LWAMVs, and CTCs be filed with the Commission for "informational purposes" on the first business day on or after April 1st for Applicable Periods A and the first business day on or after July 1st for Applicable Periods B. ComEd says that the MVECs, LWAMVs, and associated CTCs for each customer class submitted in Exhibit B, Attachment 4 attached to ComEd's petition would be the actual MVECs, LWAMVs, and associated CTCs for each customer class to be used during the first Applicable Period A beginning in 2000.

ComEd proposes that Rider PPO-MI become effective on May 1, 2000. ComEd avers that an effective date of May 1 will allow the terms of the rider and the associated CTCs to apply for the entire June 2000 billing period which begins for certain customers as early as May 1 based on ComEd's meter reading schedule.

To implement its methodology, ComEd submitted tariff language for a new tariff Rider PPO-MI and revisions to its Rider PPO-Power Purchase Option (Neutral Fact Finder) ("Rider PPO-NFF") and Rate CTC. ComEd also proposes various transitional provisions in both its tariffs and testimony. For example, under ComEd's proposal, customers will be given the choice to remain with charges that reflect the NFF methodology for the remainder of 2000 or move to those set using the market index methodology. (Petition at 5) Existing customers on Rider PPO-NFF would have a one-time opportunity to switch to the new Rider PPO-MI between May 1 and June 15, 2000. As of the effective date of Rider PPO-MI, no new customers would be permitted on

Rider PPO-NFF. All customers on Rider PPO-MI would have contracts that expire with the May 2001 billing period.

ComEd representative Paul Crumrine testified that under ComEd's proposal, customers taking electric power and energy supply services from a Retail Electric Supplier ("RES") prior to the effective date of the new Rider PPO-MI will have two options: 1) move to the new regime and pay CTCs that are based on the new Rider PPO-MI, or 2) continue to pay CTCs that are based on the current Rider PPO-NFF (the default option, according to Mr. Crumrine). (Crumrine Direct at 16) As discuss above, the first option is open during a 45-day window. Mr. Crumrine also testified that beginning with the January 2001 monthly billing period, all delivery services customers will be subject to transition charges under Rider PPO-MI. (Crumrine Direct at 17)

If the tariff revisions proposed by ComEd are approved, ComEd says it will file a report with the Commission at the end of the year evaluating the effect of implementing the tariffs and would circulate such report to interested parties. ComEd says it is committed to working with the Commission and interested parties to make any necessary changes to ensure that the alternative market value calculation methodology is functioning as intended and to improving this methodology if needed in the future. (Petition at 7) ComEd also stated that by agreeing to file a report and participate in future proceedings, it is not waiving its right to object to modifications pursuant to Section 16-112(m) of the Act. (Response Pursuant to Hearing Examiner's Order dated April 10, 2000 at 4)

D. Purported Benefits of Proposal

ComEd asserts that its alternative market-based methodology is preferable to the NFF process for several reasons. First, ComEd states that its methodology produces reasonably accurate market values based on forward quotes from two different sources to determine on-peak market values, and recent historical price data to calculate market values for the less volatile off-peak period. ComEd says that, in contrast, many parties believe that the market values in the NFF process are less accurate because they are based on an administrative process that utilizes older contracts, some of which have multi-year terms. Second, ComEd claims that its proposal is objective and not subject to manipulation because it uses many different forward prices, and that any motivation to manipulate the forward market by making artificially high or low bids or offers is removed by the ability of any other party to counter with low or high offers or bids. ComEd argues that in contrast, the NFF methodology is based on a relatively small number of contracts which may comprise limited observations of market expectations.

Third, ComEd claims that the price data used in its alternative market-based methodology is easily accessible to all market participants at a nominal cost, and the calculations required to estimate market values are straightforward. According to ComEd, the NFF process involves judgments regarding contracts to be included and the treatment of these contracts, virtually making the determination of market values a "black box." ComEd asserts that the "Into ComEd" electricity market has made significant developmental strides in the past few years, such that the market can provide significant information on actual transactions. ComEd states that Altrade™ and Bloomberg have recently begun to administer forward markets in its control area. ComEd asserts that NFF-based market values appear to be based on an unrepresentative and outdated set of transactions involving very few megawatt hours. Finally, ComEd avers that its proposed index enables both customers and suppliers to better forecast future market values. (Petition at 4)

E. Wholesale Offer

ComEd claims that in response to concerns raised during the workshops and in order to assure all market participants concerning the integrity of the alternative methodology, ComEd is also proposing to offer to all retail electric suppliers serving retail load in ComEd's territory, for a limited time, a wholesale full-requirements service priced at the market values determined using the Commission-approved NFF and market-based methodologies. Energy under this offer would be as firm as native load. ComEd says it provided, for information purposes, a summary of this proposal. ComEd asserts that this offer should ensure that the alternative methodology is accurate and fair to all market participants. ComEd further asserts that this offer will promote competition by giving comfort to all market participants that the CTC and PPO are set at appropriate levels. According to ComEd, this offer is contingent upon a Commission finding that ComEd's offer in conjunction with its proposed alternative market-based methodology is just and reasonable and would promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers.

ComEd representative David Nichols testified that ComEd would offer RESs two wholesale full requirement's contracts that would be firm as native load and qualified for network transmission service under ComEd's OATT. He says the first is for a one-year period, June 1, 2000 through May 31, 2001 and is priced on an individual customer basis at the rate levels established in ComEd's Rider PPO-MI. He says the second wholesale offer is similar, but the term is for June 1, 2000 through September 30, 2000 and priced on an individual customer basis at the rate levels established in ComEd's Rider PPO-NFF. (Nichols Direct at 12)

III. POSITIONS OF STAFF AND INTERVENORS

The positions of Staff and Intervenors as set forth in their written comments and are summarized below. Their positions, as well as ComEd's, are further summarized elsewhere in this order in the discussion of parties' exceptions to the proposed order and replies thereto. To the extent parties have updated their positions since filing comments, those updated positions are summarized in the discussion of exceptions and replies in subsection D, rather than in subsections A, B or C of this Section of this order.

A. Parties Supporting ComEd's Tariffs

1. PE Services' Position

PE Services an alternative retail electric supplier ("ARES"), supports ComEd's proposed tariff establishing an alternative to the NFF process, conditioned upon the Commission's approval of ComEd's related proposal to sell full requirements wholesale power to RES. Absent that offer, PE Services would not support ComEd's filing. Additionally, PE Services says its understanding is that a RES with the agency authority to enter into and amend agreements on behalf of the customer will be able to make, on behalf of the customer, the service elections provided for in ComEd's filing. (Comments of PE Services at 2)

2. Nicor Energy's Position

Nicor Energy, an ARES, requests that the Commission adopt Commonwealth Edison's Petition for a market based index to replace the Neutral Fact Finder process effective May 1, 2000 and enter a notice of rulemaking in conformance with the arguments presented by Nicor Energy.

Nicor Energy believes that after this summer, it would be reasonable for the Commission to convene a workshop of interested stakeholders to examine the effectiveness/efficiency of the PPO-MI and the Rate CTC (whether approved or not approved). Given that wholesale and retail power markets are still developing, Nicor Energy says specific terms and conditions, terms of measuring the market value, and the application of those market values to retail customers should all be examined over the next several years in order to continue to develop an efficient competitive market for power and energy.

3. Other Parties

The Commission also notes that affidavits from five "interested parties" were attached to ComEd's petition. These affidavits, as written, expressed support for ComEd's proposal. The "interested parties" who provided those affidavits are CIPS; Nicor, Energy; NewEnergy; PE Services, Inc.; and Unicom Energy, Inc., an ARES. The current positions of these parties are summarized elsewhere in this order.

B. Parties Opposing ComEd's Tariffs

A number of parties oppose ComEd's position for the reasons summarized below. Among other things, these parties believe there are important substantive issues in this case which warrant meaningful analysis, but that the scheduling imposed in this case, which calls for an order to be before the Commission for consideration and/or action by April 27 as requested by ComEd, does not allow sufficient time to properly address these issues.

1. IIEC's Position

IIEC's position is that the market value methodology proposed by ComEd in this docket should be rejected. As discussed below, the primary concern of IIEC in this proceeding is the potential thinness of the market represented by Altrade and Bloomberg PowerMatch. IIEC's second major concern is that because of the potential lack of actual transactions it is possible that prices determined under this methodology will be based in large part upon bid and ask quotes. In addition, IIEC continues to object to the scheduling imposed in this case which calls for an order to be before the Commission for consideration and/or action by April 27. IIEC says there are important substantive issues which need to be addressed, and that the schedule proposed by ComEd does not allow sufficient time, or in some instances any time, for a review of the filing and for meaningful participation in the proceeding. IIEC argues that is should be granted the right to conduct complete discovery prior to preparing its testimony, and to respond to testimony presented or offered by others, conduct cross-examination, and prepare and file briefs. IIEC believes this matter is a contested case under Section 10-101 of the Act and, therefore, it should be entitled to present testimony, etc., in this proceeding. IIEC also requests, pursuant to 83 Ill. Adm. Code 200.640 that the Commission take administrative notice of the record in Docket No. 99-0171, relating to ComEd's prior proposal for an alternative to the NFF. (IIEC Comments at 1-2) The Commission notes that sworn statements from two experts, Dr. Linda Bowyer and Mr. Robert Stephens, have been presented in support of IIEC's position.

IIEC asserts that if given a reasonable opportunity to conduct discovery prior to filing testimony, it would attempt to show that the ComEd index is not transparent, is not based on publicly available data, does not promote price stability and does not enable customers to forecast future market values. IIEC argues that the values attributed to the previously rejected market index proposal in Docket No. 99-0171 are absent in the current proposal. Similarly, IIEC asserts that the inherent flaws of the prior proposal, e.g., thinness and potential for manipulation are present to an even greater degree in the current proposal. (IIEC Comments at 3)

IIEC next states that if ComEd cannot demonstrate that its proposal and the tariffs implementing same conform to the requirements of the Act, the Commission cannot approve the tariff as a matter of law. IIEC argues that ComEd has not shown that its proposal is in conformance with the statute. IIEC also says that pursuant to the requirements of Section 9-101 of the Act, the Commission, must determine whether the tariff proposed by ComEd is just and reasonable. (IIEC Comments at 3-4)

The primary and overarching concern of IIEC in this proceeding is the potential thinness of the market represented by Altrade and Bloomberg PowerMatch. IIEC asserts that what it describes as "the ComEd in-house" index proposal may be so thin that it is not representative of the market in which ComEd sells and the customers in its service territory buy electricity. It is only logical, according to IIEC, that the Commission must determine whether or not the ComEd index, and hence the underlying Bloomberg and Altrade data, is representative of the market in which ComEd sells and customers in its service territory buy. According to IIEC, if the Altrade and Bloomberg data do not reasonably reflect the breadth and scope of that market, the ComEd index based upon that data is not appropriate for use as an alternative to the NFF. (IIEC Comments at 5)

IIEC asserts that the ComEd proposal may determine market value for customers in Illinois for a year using only twice a day "snapshots" over a 20-day period in a market with less than 2% of the volume in the market. IIEC believes that there were few, if any, actual transactions in the out-months described in the Altrade/Bloomberg data. IIEC also asserts that many of the "prices" used by ComEd to develop the on-peak market value under its proposal are really not prices at all, but averages of posted bid and ask quotes not representing actual trades. IIEC believes some unstated number of the bid and ask quotes were posted by ComEd itself and that a high percentage of such quotes reflects the potential for manipulation. (IIEC Comments at 5-6)

IIEC next argues that the ComEd proposal does not incorporate "options or futures contract or contracts" as required by Section 16-112(a) because bid and ask quotes do not constitute such a contract or contracts. ComEd, according to IIEC, has not demonstrated that its proposal constitutes an "exchange traded or other market traded index." IIEC claims that the index in question has been developed internally by ComEd. (IIEC Comments at 6)

IIEC's second major concern is that because of the potential lack of actual transactions it is possible that prices determined under this methodology will be based in large part upon bid and ask quotes. IIEC asserts that there is no indication that the average bid and asked price is currently representative of the relevant market. Bid and asked prices, according to IIEC, do not constitute actual transactions. (IIEC Comments at 6)

IIEC next indicates that the unregulated nature of the internet based markets reflected in the ComEd proposal is also a matter of concern to IIEC. IIEC says that these markets are apparently unregulated by Federal Securities Regulators such as the Securities and Exchange Commission and Commodity Futures Trading Commission. IIEC asserts that a lack of oversight by such a governmental agency or at least internal rules and procedures for the exchange, only adds greater weight to the concerns for potential manipulation given the thinness of the markets proposed for use by ComEd. (IIEC Comments at 7-8)

IIEC also expressed concern that the ComEd methodology does not allow complete transparency and access by retail consumers. IIEC says that unlike futures markets, which have historical databases and open market access to anyone with a futures trading account, the Altrade and Bloomberg markets are subscriber markets. Retail customers, according to IIEC, are prohibited from participating in this market since they are permitted to buy power only from an alternative retail electric supplier or an electric utility. IIEC argues that if customers cannot fully participate in the subject market, it is not a market in which the utility sells and the customers in its service area buy, as required by Section 16-112(a). (IIEC Comments at 8)

IIEC asserts that the ComEd proposal may be worse in some respects than the proposal rejected by the Commission in Docket No. 99-0171. IIEC asserts that the proposal by ComEd in this proceeding is not as “transparent” as the proposal made in Docket No. 99-0171. IIEC believes that the index proposal recommended by Edison in this proceeding is, potentially, even less liquid than the index proposal rejected in Docket No. 99-0171. IIEC asserts that a single market participant made all of the bids and all, or substantially all, of the ask quotes reflected in the Bloomberg and Altrade data used to develop the ComEd on-peak market value under the ComEd alternative proposal. IIEC avers that the market was very thinly traded for the relevant period. (IIEC Comments at 8-9)

IIEC says that ComEd witness McDonald testified in Docket No. 99-0171 that ComEd did not elect to use an “into ComEd” futures index because the ComEd futures market had “limited trading volume.” IIEC claims that ComEd’s proposals for determination of the on-peak market value in the instant proceeding are based on “limited trading volume.” (IIEC Comments at 9)

With regard o the specific requirements of Section 16-112 of the Act, IIEC asserts that the ComEd filing does not meet the requirements of Section 16-112(a) in that it fails to establish a procedure for determining market value in all of the years specified in subsections (b) through (h) of Section 16-112. The statute, according to IIEC, requires that Edison’s alternative to the NFF incorporate a method for determining the market value in the subject years, or that ComEd file a tariff incorporating values resulting from the neutral fact finder process. IIEC says that ComEd’s suggestion that the NFF has not yet determined values for these years is not dispositive of this issue. IIEC claims that if ComEd does not have a tariff in place which could incorporate values determined by the NFF for the subject years and the NFF does make a determination of market values for those years, customers entering the market will have to wait for ComEd to develop and implement a tariff incorporating those values. IIEC argues that in the absence of a tariff which incorporates the values the NFF will determine in July of 2000, customers will not have the option to lock in the transition charge they will pay for the entire recovery period, as IIEC asserts they may do under Section 16-112(n) of the Act. IIEC claims that depending on when ComEd develops and files such a tariff, customers may not have the option for many months, in spite of the fact that the statute specifically provides them with that option. (IIEC Comments at 10-11)

IIEC's next point of concern is that ComEd's filing could have an adverse impact on customers. IIEC claims that the timing of the ComEd proposal, particularly "Applicable Period A" unjustly enriches ComEd via an interest free loan, due to its effective date immediately prior to the high priced summer months. High summer seasonal prices, according to IIEC, combined with annualized transition charges creates a mismatch of cost bases that results in customers "front loading" transition charge revenues in the early months of the program. IIEC asserts that the ComEd proposal greatly increases the potential for payment basis disparities. (IIEC Comments at 11-12)

The next argument made by IIEC is that ComEd has failed to provide appropriate notice of its proposed change in rates and, therefore, its petition must be denied. IIEC states that ComEd has not indicated under which Section of Article IX this proceeding has been initiated. IIEC says that it must be brought under Section 9-201 and that 45 days notice is required. According to IIEC, this is a proceeding that could change an existing rate or tariff. IIEC states that ComEd is permitted to file a new tariff to establish market value under Section 16-112 and that ComEd does not seek to have the tariffs incorporating the current NFF value declared unjust, unreasonable, discriminatory, or otherwise unlawful as required by Section 9-250. IIEC argues that this must be considered a filing under Section 9-201 and, thus, 45 days notice is required. According to IIEC, where statutory notice, hearing and evidentiary requirements are not followed, the Commission loses its jurisdiction to act and any order it enters under such circumstances, is void. IIEC claims that if, on the other hand, this is a Section 9-250 proceeding, this is a contested case under Section 10-101 of the Act and IIEC would be entitled to cross-examine witnesses and to present testimony in rebuttal to ComEd. (IIEC Comments at 12-13)

With regard to the period of time for which the proposed tariff would be in effect, IIEC states that it does not support the implementation of the ComEd alternative to the NFF even if the tariff were placed into effect for a "defined period of time" rather than a "indefinite time period." IIEC asserts that there are significant flaws in the methodology which make its implementation even for a temporary period of time inappropriate. IIEC states that, under any circumstance, the alternative tariff should only be in effect for a defined period of time not to exceed one year given the uncertainties associated with any approach. (IIEC Response to the Questions Posed by the Commission at 2)

2. Enron's Position

Enron asserts, in its verified comments, that Edison has failed to demonstrate that its proposal is just and reasonable. Enron claims that on its face, Edison's proposal is designed to improperly shift risks from Edison and its shareholders to ratepayers and ARES. Enron also argues that the schedule adopted in the instant proceeding violates due process and is contrary to the Commission's rules, Commission practice and Illinois law. Enron recommends that the Commission reject Edison's Petition. (Enron Comments at 1)

Enron claims that manipulation under Edison's proposal is likely to occur because the markets represented by Altrade and Bloomberg are thinly traded and could easily be manipulated. Enron asserts that in a low volume market, the number of contracts necessary to move the price would be relatively small. Enron claims that the impact of just a few trades could be inordinately significant in light of the fact that the markets have few, if any, contracts that are being traded. (Enron Comments at 4-5)

Many major market participants, according to Enron, do not actively trade on Altrade and only sporadically trade on Bloomberg. It is entirely possible, Enron argues, that trades by Edison could dominate these systems, thus improperly skewing the price calculations. Enron also asserts that a limited number of trades are actually completed on the Altrade and Bloomberg systems. All other values, according to Enron, were based on bid and ask prices. (Enron Comments at 5)

According to Enron, other problems are presented as a result of the proposed "bid/ask" methodology and the discretion given to Edison to print the screens which would be used in calculating the Market Value. Enron argues that the daily screen prints of Altrade and Bloomberg are subject to extreme manipulation due to the two hour window that is allegedly required by the "manual" nature of the process. During this two hour window, Enron says multiple screen prints can be made and then the number most favorable to Edison could be selected by Edison. Enron argues that Edison easily could devise schemes that would allow it to improperly profit from its generation assets. For example, Enron suggests that prior to the March "snapshot" Edison could announce a scheduled maintenance for one of its biggest nuclear units during the summer months, knowing that such maintenance would not actually occur. (Enron Comments at 6-7)

Enron asserts that Edison's proposal would not provide an accurate reflection of the price of electricity in Illinois – at either the wholesale or the retail level. Enron says the Commission should question whether the Altrade and Bloomberg systems, Power Markets Week's *Daily Price Report*, and hourly price shapes of the PJM Interconnection, L.L.C. accurately reflect the Illinois market. Enron says that it does not appear that either Altrade or Bloomberg reflect the market in which Edison sells and customers in its service territory buy electric power and energy. Enron also says that it does not appear that the PJM Interconnection, L.L.C., Western Hub, Locational Marginal Price Data reflects the hourly prices in which Edison sells and customers in its service territory buy electric power and energy. Finally, Enron claims that it does not appear that the Power Markets Week's *Daily Price Report* reflects the off-peak market in which Edison sells and customers in its service territory buy electric power and energy. (Enron Comments at 7-9)

Enron claims that, on its face, Edison's proposed Rider PPO-MI does not lend itself to customer understanding and implementation on such short notice. Without adequate time for consideration, Enron says that approving Edison's proposed tariffs simply would add to customer confusion regarding the electric markets in Illinois. Enron says it already has been forced to field a variety of questions from customers who do not understand the way in which the instant proceeding could impact their rates. (Enron Comments at 9-10)

Enron says that the Customer Choice Act requires that any alternative to the NFF be based upon an index, not historic data. The Customer Choice Act, according to Enron, also requires that the index reflect the prices in the market in which Edison's customers buy electricity. Enron claims that Edison's proposal fails to meet these fundamental legal requirements. (Enron Comments at 8-9, 11-12)

Enron recommends that in light of the thinly traded nature of the markets represented by Altrade and Bloomberg, as well as the even greater potential for abuse and manipulation, the lack of any third-party executor to protect against manipulation, and the lack of complete a record, the Commission should reject Edison's current proposal just as it rejected Edison's previous proposal in Docket No. 99-0117. (Enron Comments at 14)

Implementation of Edison's proposal, according to Enron, is not a statewide solution and would increase the lack of uniformity in determining market values for Illinois electric utilities. Enron claims that further eroding uniformity in the way in which transition charges are calculated would discourage the development of competition across the State of Illinois. Adoption of Edison's proposed tariffs, according to Enron, would further exacerbate the problem of the lack of uniformity among delivery service tariffs throughout the state. (Enron Comments at 10-11)

Enron claims that Edison has failed to present sufficient evidence that its proposal is just and reasonable, much less evidence that it is superior to the NFF process. Enron argues that based upon the information submitted solely by Edison, its present proposal is deficient in its methodology and lacks sufficient credibility to make it an attractive alternative to the NFF process. Enron says that since Edison has failed to satisfy its burden of proof, the Commission must reject Edison's proposal. According to Enron, Edison has not provided any evidence regarding the number of trades, volume of trades or the likelihood of market manipulation associated with the Altrade and Bloomberg systems. Enron says that Edison failed to even provide the workpapers behind its current proposal. Given the lack of evidence in this record, Enron avers that it would constitute reversible error for the Commission to adopt Edison's current proposal. (Enron Comments at 12-14)

Citing Section 16-112(m) of the Act, Enron says that if the Commission were to adopt Edison's proposal, the Commission may not ever be able to change or modify the tariffs. Enron says that while it appears that Edison is willing to file a "report" regarding the impact of its proposal, Edison does not suggest that the Commission could modify the proposal once it becomes effective. Enron argues that the Commission should not adopt a potentially permanent restructuring of the Illinois electric industry based upon what it claims is a scant, legally deficient record in the instant proceeding. (Enron Comments at 14-15)

Enron states that if the Commission decides to adopt Edison's proposed tariffs, it should require that the tariffs remain in effect for only the remainder of calendar year 2000. Enron asserts that the numerous questions regarding the liquidity of the markets represented by Altrade and Bloomberg and the vagaries and uncertainties of the retail market in Illinois warrants a limited duration for the effectiveness of Edison's proposed tariffs. If the Commission were to adopt Edison's proposal, Enron says that Edison should agree to allow the Commission, on its own motion, or upon complaint, to retain jurisdiction over the instant tariffs, notwithstanding any prohibition contained in Section 16-112 of the Act. (Enron Comments at 21)

3. The City of Chicago's Position

The City of Chicago ("City") argues that the schedule adopted in this proceeding dictates that ComEd's proposal is essentially a "take it or leave it" proposition. There is not a reasonable amount of time, the City claims, to develop a record to support modifications or alternative approaches that Edison has not accepted in its filing. (City Comments at 3) The reality, according to the City, is that whatever index process the Commission approves is likely to be in place for years. That prospect alone warrants care and deliberation in the Commission's actions, according to the City. (City Comments at 4)

The City argues that like its predecessor, the current proposal is based more on the anticipation of a functioning, efficient market than on the existence of such a market. The City says it also suffers from a dearth of actual sales transactions on which to base an index. According to the City, Edison's proposed reliance on a bid/offer data set assures that the PPO market index price will not reflect actual market prices, but mainly prices that have been rejected in the market. The City says that Edison has presented no evidence that demonstrates a meaningful correlation between such bids or offers and the prices at which sales were actually concluded. (City Comments at 5)

The City says there is no attempt to address the fact that bids and offers by wholesale suppliers and buyers are used to determine prices for retail customers under the Edison proposal. The failure to address this issue in a proposal that is intended to cure the ills of the NFF process, the City argues, cannot be lightly dismissed. (City Comments at 5-6)

The City argues that because of the statutory prohibition on negative CTC charges, and because no tariffed business rates exceeds 10¢/kWh – a level that summer market prices might reasonably be expected to exceed – Edison's proposal is not likely to be revenue neutral with respect to CTC collections or total revenues. Focusing on just the structure of Edison's proposal, the City claims that Edison will not collect less than it does under the NFF procedure. The City further argues that because a negative CTC that might otherwise result from high summer prices is not permitted by statute, the utility's CTC collections can exceed the previously calculated "lost revenue." According to the City, Edison will over-collect the amount otherwise calculated for CTC charges. (City Comments at 6-7)

The City claims that the unavailability of "negative CTC" pay-outs at summertime price levels means that customers may (a) face increased total annual CTC charge payments and (b) have their savings from choosing competitive power and energy reduced. The City argues that, stated in extreme terms, Edison's proposal may simply substitute one market distortion (over-collection of "lost revenue" CTC charges based on rejected wholesale commodity prices) for another (PPO-NFF retail prices based on a few wholesale contracts), with no effective reduction of the economic barriers to customer choice. (City Comments at 8)

4. The AG's Position

The AG states that ComEd's petition seeks a Commission ruling that its proposed tariffs be found "just and reasonable." Since the Commission has not issued an order waiving the 45-day notice requirement, pursuant to Section 9-201, the AG asserts that the 45-day notice period remains in effect. The AG further argues that ComEd has not demonstrated a showing of "good cause" needed to justify waiving the 45-day filing requirement, such as emergency circumstances that would prevent the provision of electric service barring the immediate implementation of tariffs. (AG Comments at 3-4)

According to the AG, the Commission should therefore consider the appropriateness of the tariffs through traditional hearing procedures, as set forth in Section 9-201(b), especially given the importance of the issues. The AG believes this process should include notice, and a reasonable opportunity to pursue discovery , hold hearings, conduct cross examination and file briefs. The AG argues that the schedule imposed in this case is so accelerated it did not provide sufficient time, or in some instances any opportunity, for these elements, and as such is inconsistent with the Illinois Administrative Procedure Act, the PUA, procedural due process and Commission practice.

C. Parties Proposing Modifications to ComEd's Tariffs

1. Staff's Position

Staff member Roger Christ filed prepared testimony that addressed ComEd's "wholesale" option and its relation to ComEd's proposed Rider PPO-MI and to Rider

PPO-NNF. He also recommended that the Commission condition the approval of the Petition on ComEd modifying the “wholesale” option as follows: (1) to deduct retail marketing costs from the PPO Riders when their market values are used in the “wholesale” option because these costs are inappropriate in a wholesale market, and (2) to make the “wholesale” option available as long as Rider PPO-MI is available because the assurance provided by this option will be needed as long as Rider PPO-MI is available. Staff member Richard Zuraski provided some background on: (a) the nature of the delivery services option for purchasing electric services on an unbundled basis; (b) the Power Purchase Option; and (c) the customer transition charge paid by delivery service and PPO customers under the Act. He also commented on the importance of the “market value” in the computation of PPOs and CTCs. He briefly addressed the Commission’s authority to modify a utility’s proposal to implement a non-NFF alternative mechanism for computing market values. He described ComEd’s proposal for a “market-based alternative tariff” that would be used, in lieu of the Neutral Fact Finder process, as the basis for computing market values for ComEd’s own PPOs and CTCs. He attempted to assess certain elements of the ComEd proposal. Finally, he recommended approval of ComEd’s proposal with Mr. Christ’s modifications.

Generally speaking, as noted above Staff recommended that ComEd’s petition be granted with certain modifications to ComEd’s wholesale option. It appears, however, that the bases for Staff’s recommendations include data, designated as confidential by ComEd, that ComEd has made available only to Staff. Some of this confidential information is contained in unredacted versions of Staff’s testimony, and this information was relied upon by Staff in formulating recommendations which are adverse to some of those parties. Despite the expedited nature of this proceeding, it is still necessary to proceed in a manner that maintains due process and fundamental fairness to all parties. Further, the Commission believes that as a general rule, full dissemination of data to all parties, either through confidentiality agreements or otherwise, is to be strongly encouraged. The Commission also notes that there were exceptions and replies regarding the discussion of this issue in the proposed order. Having given consideration to the comments of the parties on this issue, the Commission observes that there is no indication from other parties that the confidential information in question was requested but not provided to them in this proceeding, either pursuant to a confidentiality agreement or otherwise. Accordingly, whether such information should have been made available to other parties had it been requested, or whether it would be appropriate to base a finding on Staff analyses which relied upon such data while other parties were denied access to it, is a difficult question but one the Commission does not reach in this order.

2. CILCO’s Position

CILCO does not support the ComEd accelerated time frame to have the Commission enter an order on April 27. The schedule does not allow adequate time for the parties to properly address issues relating to the filing, according to CILCO.

CILCO recommends that if the index proposed by ComEd is approved, a one-year "sunset" provision be incorporated in the Commission order. CILCO claims that this provision would enable further analysis, examination and understanding of the Market Index and its applicability as a long-term solution to the Neutral Fact Finder process. CILCO says that, for example, if a determination is made that Retail Electric Suppliers are required to supply reserve requirements, then modifications to the proposed index need to occur.

CILCO also recommends that ComEd grant flexibility to customers making energy purchase decisions during the time frame of this proceeding. Customers who elect the Power Purchase Option in April should be granted a one-time opportunity to return to delivery services with retail electric suppliers within a 30-day time frame of the final order being entered, according to CILCO.

CILCO says that, as proposed, the market value for Period B will create exceptionally high CTCs which will strongly discourage any customer from leaving ComEd supply from September 2000 to May 2001. CILCO argues that as a consequence, there will be very little if any customer switching during this period. The proposal provides a summer fix for existing delivery service customers at the expense of customers who will be eligible to switch beginning this fall, according to CILCO.

3. MEC's and CMS Marketing's Position

The filings submitted by MEC and CMS Marketing appear to indicate that each has reached the same negotiated agreement with ComEd. The filings indicate that ComEd and each of these parties would be willing to accept a Commission proposed modification to ComEd's original proposal that is consistent with the modifications discussed in the filings of these parties.

The proposed order noted that the "negotiated agreements" between ComEd and these two parties had not been reviewed by the other parties to this proceeding and these other parties had no opportunity to comment on the provisions of the "negotiated agreements." In addition, the proposed order noted that neither MEC nor CMS Marketing either explained what the proposed modification are or why the proposed modification should be adopted. As a result, the proposed order did not accept the proposed modification contained in the filings of MEC and CMS Marketing. This modification has been further addressed by parties in their exceptions and replies as discussed below.

4. NewEnergy's Position

By way of introduction, NewEnergy says, in its verified comments, that the ComEd filing presents the Commission with an opportunity to forward the cause of competition in ComEd's service territory and the State of Illinois. NewEnergy's objective in seeking approval of an index based tariff is that a fully appropriate index tariff be placed in operation. NewEnergy supports approval of the methodology advanced by ComEd in its Petition; however, NewEnergy does not support use of ComEd's proposed methodology for periods beyond May, 2001. (NewEnergy Comments at 1 to 4)

According to New Energy, as competition unfolds under the Electric Service Customer Choice and Rate Relief Law of 1997, NewEnergy and others have provided significant savings to electricity customers throughout ComEd's service territory by utilizing direct (procurement of wholesale supply) and indirect supply alternatives (assignment of the Power Purchase Option); however, the ability of energy marketers to provide additional savings to even more customers is threatened by the operation of the Market Values that result from the NFF process and the existing Rider PPO-NFF that incorporates power and energy prices based on the NFF Market Values. New Energy says the NFF Market Values are below the cost of serving those customers and are far below those for the summer season, and that without regulatory changes that rectify this serious imbalance, the ability for customers to receive electricity savings from alternate suppliers greater than otherwise available from ComEd under Rider PPO-NFF will be impaired and competition will stall.

NewEnergy believes action by the Commission on an expedited basis approving an appropriate replacement for the NFF in the form of a market based index tariff will prevent a "nearly complete re-monopolization" of retail electric service only eight months after the first ARES flowed competitive wholesale power on behalf of its customers on October 1, 1999. NewEnergy considers approval of an "interim alternate-market based index" to be substantial progress on the road to full and fair competition in ComEd's service territory. (Id. at 2)

With regard to the timing of this application, NewEnergy contends that without action by the Commission prior to the summer supply period, savings to delivery service customers will be limited to the minimum level which the Act provides via the mitigation factor. (Id. at 5-6) In NewEnergy's view, absent approval of the index and related transition mechanisms, virtually all current delivery service customers will move or be moved to the PPO. NewEnergy says the NFF market values are well below actual summer season market prices and therefore the CTCs are far higher than they should be, and that as a result, customers will be trapped without access to savings greater than those available under Rider PPO-NFF. (Id.)

NewEnergy next states that ARES have entered the market to provide savings greater than or equal to the PPO. (Id. at 7) NewEnergy believes the transitional mechanisms in the proposed tariff as well as the index itself, by reducing the CTC and increasing Market Values to levels more in line with the actual market, present the opportunity for more of the customer's energy dollars to be in the contestable market place, thus providing the potential for savings above the minimum.

NewEnergy also contends that ComEd's petition improves upon a previous request for approval of a market based index in several ways (Id. at 8-9), such as:

- use of an index that is "into ComEd" rather than an index based on the Cinergy futures contract plus a "basis differential."
- better representation of the large seasonal differences in market prices for power and energy; and
- adjustment of the index, though not as completely as necessary, to recognize the cost of serving volatile hourly retail loads.

NewEnergy next argues that while ComEd's proposal is a step in the right direction, there are several issues that need to be addressed before a permanent solution is established. In this context, NewEnergy claims ComEd's proposal does not adequately reflect the fair market value of serving retail for the following reasons, among others:

1. relying excessively upon historic off-peak M.A.I.N. prices from periods prior to open access as a basis for calculating off-peak forward market values of energy;

2. relying solely on 1999 historical PJM price data for price shaping and 1999 historical ComEd load data for load shaping a purportedly "forward" looking market index;

3. utilizing on-peak forward prices from non-regulated reporting services which appear to include prices from a limited number of actual transactions that may not represent transactions associated with serving retail load, may not reflect a liquid market, may not be at arm's length, and may not be of the size ordinarily associated with serving retail customers; and

4. failing to provide any adjustment for the uncertainty and variability associated with serving retail electric load.

NewEnergy also argues that approval of ComEd's proposal should be followed by Commission sponsored workshops to consider potential deficiencies with the index-methodology in ComEd's proposal. (Id. at 11-12) NewEnergy also says ComEd is aware that NewEnergy and others do not support the use of the proposed methodology beyond May, 2001 – the period through which ComEd has also agreed to make available a default service with wholesale prices equal to those resulting from the proposed methodology.

With respect to whether the ComEd proposal will provide additional opportunities for savings to customers (Id. at 12 to 22), NewEnergy believes that absent action by the Commission, those opportunities will diminish or be non-existent as all existing delivery service customers will be served by ComEd under Rider PPO-NFF. NewEnergy says this "complete re-monopolization" of the market is inconsistent with the objective of deregulation to promote sustained competition. (Id. at 12)

With respect to other parties' criticisms of the ComEd petition, NewEnergy says there are ways to address these concerns while at the same time moving ahead on the index in order to avoid re-monopolization. According to NewEnergy, if the index proposed in the Petition is seen as an interim improvement in the competitive opportunities available for customers, then flaws can be remedied in the near future based on experience, just as the proposed index is a reflection of improved knowledge based on experience over the past year. (Id. at 13)

NewEnergy next addresses certain criticisms it says were raised by IIEC regarding ComEd's proposed market value methodology. NewEnergy believes two of these concerns have some merit, but should not stand in the way of expedited approval of the petition. Instead, NewEnergy argues, these concerns should be the subject of further attention and possible modifications to the market value methodology in the future. One such concern is that ComEd's proposal "gives equal recognition to not only the value ComEd can <u>sell</u> electricity but also the value ComEd can <u>buy</u> electricity." NewEnergy says providing equal recognition results in the proposed market values being well below "the value of the freed-up electricity that ComEd can sell." (NewEnergy comments at 14-15) The second is that ComEd's proposed index methodology "also provides equal recognition to the value ComEd <u>buys</u> power and energy for in the peak and off-peak period, thereby artificially depressing its proposed Market Values," which in turn results in ComEd's transition charges being artificially inflated. (Id. at 16-17) In this context, NewEnergy describes potential modifications that might be considered in the future, which NewEnergy says would "raise on-peak prices as they are set too low," and "raise off-peak prices as they are set too low." (Id. at 17 to 20)

NewEnergy believes that after approval of an alternate methodology, the Commission may want to consider modifications to that methodology as a result of the workshop process or otherwise. Significantly, NewEnergy's support for the proposed index is itself limited to the period through May, 2001 – the point through which ComEd has agreed to provide a default wholesale service to ARES serving retail load. (Id. at 26) NewEnergy's support for the Petition on an interim basis is dependent upon ComEd's willingness to make available wholesale power and energy through a default service through May, 2001 in the event the Petition is approved.

NewEnergy also believes the workshop process to be essential in further understanding and identifying fully other deficiencies in any index methodology that receives the Commission's approval on an expedited basis. As those deficiencies are better understood by parties such as ComEd, NewEnergy says the Commission can require further modifications to the index methodology as part of the Commission's continued supervision of ComEd, and that such modifications may include revisions in the market value calculation or – for periods beyond May, 2001 – a revised default service.

NewEnergy further suggests that in order to improve the prospects for competition in ComEd's service territory and also allay the concerns advances by other parties in this case the Commission should craft a solution that approves the Petition and allows for improvements to the index methodology over time. Specifically, NewEnergy recommends the Commission adopt an order in response to the Petition that: (1) approves an alternate market based index in the form submitted by ComEd with any limited modifications deemed reasonable by the Commission; (2) sets a time schedule for initiation and completion of workshops regarding the sufficiency and inadequacies of any index methodology that is approved; (3) provides that continued availability of any index methodology remains subject to Commission jurisdiction and modifications consistent with the public interest; (4) establishes that if at any time before January 1, 2001 ComEd does not agree with modifications to the index recommended by the Commission, ComEd will be required to revert to the market values derived by the Neutral Fact Finder for transition charges and Rider PPO effective January 1, 2001; and (5) conditions continued availability of use of the alternate index methodology upon ComEd making available wholesale power and energy to energy marketers serving retail customers at a price equal to the market value calculation. NewEnergy believes that adoption of such an order appropriately balances the necessity for action to preserve competition under the current situation and the need for improved long-term cooperation by ComEd in the design and operation of alternates to the NFF process. (Id. at 27-28)

D. Exceptions and Replies

As explained more fully below, the Hearing Examiner's Proposed Order found that ComEd should be authorized to implement its proposed market index based tariff, subject to certain related modifications. Under the first modification, referred to and supported by some parties as a "sunset provision," ComEd's proposed market based tariff would remain in effect only through the May 2001 billing period. Second, customers who choose to continue to pay CTCs based on the current NFF based tariff would not be required to switch to the market index based tariff on December 31, 2000 as proposed by ComEd. Finally, under ComEd's proposal, after the effective date of Rider PPO-MI, no customer would be allowed to begin taking service under Rider PPO-MFF, and this restriction was removed by the HEPO. Exceptions to the proposed order, with suggested replacement language, and replies thereto, were filed by a number of parties, and are summarized below.

1. Exceptions filed by ComEd and Unicom Energy; Replies Thereto

ComEd filed certain exceptions to the proposed order, along with suggested replacement language. In its exceptions, ComEd first takes issue with the proposed modifications which the HEPO recommends be made to ComEd's proposal.

According to ComEd, the most serious error is the HEPO's failure to provide for the prompt phase-out of the NFF based market values. ComEd says the HEPO's requirement that ComEd simultaneously offer PPO prices and CTCs based on inconsistent market index and NFF methodologies would send improper and confusing price signals to customers and suppliers, delay efforts to transition to more accurate market-based prices, and stymie efficient and effective competition. ComEd claims no party supported this approach in its written comments. ComEd also says maintaining two methods of determining market value is inconsistent with Section 16-112 of the Act. ComEd also states that it cannot accept this approach and, if it were adopted, ComEd would not implement the market index tariffs. In ComEd's view, the phase-out of Rider PPO-NFF as proposed by ComEd must be restored if the proposal is to be both beneficial to the market and acceptable to ComEd under Section 16-112(m) of the Act. (ComEd exceptions at 2 to 5)

ComEd also argues that the proposed market-index tariff should not automatically "sunset" in one year. ComEd says the parties sought a market-index methodology to better align seasonal market values with actual market prices, and that RESs and utilities alike will wish to plan based upon the knowledge that they will have a real market-based price. While tariff improvements may or may not be required, Edison believes that there is no reason to provide for an "automatic" retreat to the NFF. According to ComEd, although it cannot agree to a sunset provision, it would agree to revise its Rider PPO-NFF to provide that it will become available again to customers after the May 2001 billing period if Rider PPO-MI is discontinued.

ComEd also takes exception with determinations in the proposed order regarding certain modifications to the transition provisions which were proposed by MEC and CMS Marketing and accepted by ComEd, and to language regarding Staff's analysis. These exceptions are addressed immediately below in this order and in the discussion of Staff's Position contained elsewhere in this Order.

In its replies to exceptions, IIEC responds to ComEd's objection to the sunset of Rider PPO-MI. IIEC says that in doing so, ComEd asks the rhetorical question: "Once a viable market-index process is established, why go back?" In IIEC's opinion, the question ComEd should have asked is: "Until a viable market-index process is established, why go forward?" IIEC asserts that the record in this case, such as it is, establishes that ComEd, for all intents and purposes, is the market on the Altrade and Bloomberg internet trading services for the into ComEd hub, and that this is not a viable market-index. (IIEC reply to exceptions at 4) On this point, the Commission Staff comments, "Apparently, ComEd is not paying close attention to other voices in this proceeding; there is scant support for the notion that 'a viable market-index process' has been established." (Staff reply to exceptions at 2)

In its replies to exceptions, IIEC also responds to comments by ComEd that simultaneous implementation of both PPO and NFF rates is administratively unworkable. According to IIEC, ComEd ignores the fact that ComEd itself has proposed the simultaneous implementation of both PPO and NFF rates during the transition from Rider PPO-NFF to Rider PPO-MI. (IIEC reply to exceptions at 5) On this point Staff states that ComEd itself offered to provide PPO-NFF during a transitional period through December 31, 2000. (Staff reply to exceptions at 2)

In its reply brief on exceptions, Enron claims Edison's objections to the modifications contained in the proposed order now has guaranteed that the Commission cannot see this proceeding through to a successful resolution. Enron says that while failing to address the substantive flaws in Edison's proposal, the proposed order recommended a solution that would have allowed Edison to prove that its PPO-MI proposal was not the disaster described by its critics, by allowing Edison's PPO-MI proposal to operate side-by-side with its existing PPO-NFF tariff, allowing customers to choose which was "the better deal." Enron adds, "But Edison has said that it is unwilling to allow such a real world comparison to occur, indicating that it would prefer to have no solution at all rather than accept the solution recommended in [the] Proposed Order."

In Enron's view, because the Commission cannot mandate that Edison accept changes to the proposal, Edison has guaranteed that the Commission has no choice but to set aside Edison's petition. According to Enron, "Edison has ensured that the Commission would be placed in this impossible predicament and has not tried to help the Commission find a workable solution, [and] the Commission should not now allow Edison to strong-arm the Commission into accepting Edison's unjust and unreasonable proposal." (Enron reply to exceptions at 4) Enron, in its reply to exceptions, says that even though opponents to Edison's proposal have been procedurally hamstrung, as time passes and parties comment, the luster has faded off of Edison's proposal.

In its exceptions, ComEd also says the Commission should enter an interim order approving the proposed tariff revisions with the modifications submitted by MEC and CMS Marketing and the modification stated below:

> The Commission directs ComEd to work with the Commission Staff to better define the report to be filed at the end of the year, and directs its Staff to schedule additional workshops on the operation and development of market index proposals to begin in the fall of 2000. A hearing, if necessary, on the market index tariffs approved herein, will be set by the Commission for early 2001 to allow for a final order by April 2001. Finally, the Commission will require ComEd to modify its proposed tariffs to provide that its Rider PPO (NFF) will again become available to customers following the May, 2001 billing periods if Rider PPO (MI) is no longer in effect at that time.

In its reply to exceptions, CILCO states that it does not support the suggestion by ComEd that the Commission enter an interim order. According to CILCO, with the granting of an interim order, Period B market values would go into effect which will likely disadvantage customers selecting delivery services in that the market value for Period B will create exceptionally high customer transition charges which will strongly discourage any customer from leaving ComEd supply from September 2000 to May 2001. Consequently, CILCO claims, there will be very little if any customer switching during this period.

On another point, ComEd also contends the order should specifically state that the schedule adopted by the Commission and the Hearing Examiner is fully consistent with the requirements of Sections 16-112 and 9-201 of the Act, and with the requirements of the Administrative Procedure Act. In Edison's view, contrary to some parties' suggestions, neither Illinois law nor constitutional due process requires the Commission to hold a full-blown rate-case-type hearing, with several rounds of discovery, several rounds of briefs, and a trial-type evidentiary hearing, in every proceeding. ComEd asserts that under Section 9-201 of the Act, the Commission could have permitted ComEd's rate to go into effect without any proceeding whatever. Under the unique circumstances of this case, ComEd believes the procedures adopted by the Commission and the Hearing Examiner provided parties with an adequate opportunity to be heard and present their views and evidence.

In response to this argument by ComEd, IIEC argues that because ComEd has utterly failed to provide any reliable legal authority to support the process it fathered in the case now before this Commission, its position on this issue should be rejected, along with its recommended changes to the proposed order. (IIEC reply to exceptions at 9)

In its exceptions, Unicom Energy agrees with various exceptions filed by ComEd.

2. MEC's and CMS Marketing's Proposed Modification which ComEd does not Oppose

As previously discussed in this order, MEC and CMS Marketing indicate that each has reached the same negotiated agreement with ComEd. They indicate that ComEd and each of these parties would be willing to accept a Commission proposed modification to ComEd's original proposal that is consistent with the modifications discussed in the filings of these parties.

The HEPO noted that the "negotiated agreements" between ComEd and these two parties had not been reviewed by the other parties to this proceeding and these other parties have had no opportunity to comment on the provisions of the "negotiated agreements." In addition, the HEPO noted that neither MEC nor CMS Marketing either explained the purpose of the proposed modification or why the proposed modification should be adopted.

In its exceptions, MEC says the negotiated agreement extends the time period that all new customers will have for selecting to choose the power purchase option service under the neutral fact finder process. MEC provided replacement language that would adopt the negotiated agreements between ComEd and MEC and CMS Marketing. PE Services, in its exceptions and reply indicates strong support for the MEC and CMS Marketing transition proposal because, according to PE Services, the liberalized transition provisions benefit customers.

Both ComEd and Unicom Energy, in their exceptions, indicate their support of the negotiated agreements with MEC and CMS Marketing.

CMS Marketing, in its exceptions, states that rejection of the negotiated agreement becomes moot because the modification adopted at page 26 of the HEPO effectively provides the protection sought by CMS Marketing. CMS Marketing states that so long as the order states that any customer that does not benefit from Rider PPO-MI will have the option to utilize Rider PPO-NFF, it would not take exception to the rejection of the negotiated agreement. In response to ComEd's statement in its exceptions that it would not implement Rider PPO-MI if the Commission adopted the proposed modification on page 26 of the HEPO, CMS Marketing says that it does not object to the Commission withdrawing this proposed modification, so long as it proposes to implement the negotiated agreement between ComEd and CMS Marketing in its place. Similarly, in its reply to exceptions, Nicor Energy recommends that the Commission adopt the MEC and CMS Marketing negotiated agreement.

In its reply to exceptions, Staff recommends that the negotiated agreements be adopted by the Commission. Staff asserts that the proposed changes specified in the agreement would harm no party. (Staff reply to exceptions at 4-5)

3. Parties Supporting a Sunset Provision or other Modifications

a. NewEnergy's Exceptions

In its exceptions, NewEnergy states that ComEd's proposal should be approved, with certain modifications. In that regard, NewEnergy comments on what it refers to as the HEPO's proposed modification limiting the application of ComEd's proposed tariff "via an automatic expiration date of May 2001." NewEnergy supports the use of such a "sunset provision" or "automatic expiration date" as a means of requiring ComEd to maintain an accurate and fair market value calculation. NewEnergy asserts that the order should go even further, and include additional mechanisms for assuring that the accuracy of market value calculations. (New Energy exceptions at 1-2)

One such recommendation is that the order include a mechanism allowing for revisions to the proposed methodology that the Commission deems appropriate after a 30 day notice and comment procedure by interested parties. In the event ComEd does not agree to the recommended revisions, NewEnergy proposes that ComEd shall inform the Commission that it will instead elect to utilize the market value calculation provided by the NFF as of January 1, 2001. (Id. at 8-9)

In NewEnergy's view, the Commission's order should also set a time schedule for initiation and completion of workshops regarding the sufficiency and inadequacies of any alternate methodology that is approved; provide that continued availability of any alternate methodology remains subject to Commission jurisdiction and modifications consistent with the public interest; establish that if at any time before January 1, 2001 ComEd does not agree with modifications to the methodology recommended by the Commission, ComEd will be required to revert to the market values derived by the Neutral Fact Finder for transition charges and Rider PPO effective January 1, 2001; and condition continued availability of use of the alternate methodology upon ComEd making available wholesale power and energy to energy marketers serving retail customers at a price equal to the market value calculation. (Id. at 13-14)

NewEnergy believes that adoption of such an order appropriately balances the necessity for action to preserve competition under the current situation and the need for improved long-term cooperation by ComEd in the design and operation of alternates to the Neutral Fact Finder process. (Id. at 13-14)

In its reply to ComEd's exceptions, NewEnergy says "the Commission should adopt an Order providing that Rider PPO (MI) is approved on an expedited interim basis (along with any Commission required modifications) and is expressly subject to discontinuance and a return to Rider PPO (NFF) as of January 1, 2001 should the Commission propose – and ComEd reject after notice and comment by interested parties – modifications to Rider PPO (MI) at any time." (NewEnergy reply to exceptions at 2)

NewEnergy refers to language which was contained in that portion of ComEd's exceptions suggesting that the Commission issue an interim order in this proceeding. This ComEd language would provide in part for a hearing if necessary to be set by the Commission for early 2001 to allow for a final order by April 2001. NewEnergy states in part, "Presumably, ComEd anticipates – since it also suggests in its revisions to the Proposed Order that the Commission's Order not be considered a 'final' order – that Docket No. 00-0259 remain open thereby allowing for a hearing, if necessary, and the discontinuance of Rider PPO (MI) when appropriate." (NewEnergy reply to exceptions at 5)

In it reply to exceptions, NewEnergy also states its support of the proposed tariff modification submitted by MEC and CMS Marketing, and supported by ComEd, as discussed elsewhere in this section of the order.

b. Staff, Sieben Energy, Nicor Energy, CILCO and PE Services

In its exceptions, Staff states that it is not opposed to the conclusions of the HEPO that place a sunset date of May 31, 2001 on ComEd's authority to implement Rider PPO-MI (and its associated CTCs) and that leave Rider PPO-NFF (and its associated CTCs) in effect beyond December 2000. Staff says it believes these recommendations fairly balance the interests of the parties and prudently guard against the potential shortcomings of ComEd's proposed market index. Staff's other exceptions, regarding the HEPO's treatment of Staff's presentation are addressed above in the Section of the Order entitled "Staff's Position."

Sieben, in its exceptions recommends approving ComEd's market-based alternative with a sunset provision. Sieben also recommends that the Commission include an ordering paragraph in the order that states that the order pertains to Commonwealth Edison Company's market-based alternative tariff only and should not be used as precedent in cases pertaining to market-based pricing in the future.

Sieben also recommends that the Commission include an ordering paragraph that explicitly finds that a sunset date of May 2001 is a modification to ComEd's proposed tariff. Finally, Sieben recommends that the finding and ordering paragraphs be amended to state that the Commission will initiate a new docket within 30 days of the conclusion of this proceeding to investigate market-based pricing methodologies to fully examine the appropriate procedures and methods to establish market-based pricing in Illinois. In its reply, Staff opposed Sieben's recommendation for the Commission to launch a proceeding to fully examine market-based pricing methodologies. In Staff's view, the Commission should not launch such proceedings without a practical purpose.

Nicor Energy's exceptions indicate that it supports the sunset provision contained in the HEPO. In its reply to exceptions, also discussed elsewhere in this order, Nicor Energy recommends that the Commission adopt the HEPO with the following modifications: 1) remove the language that specifies that the PPO-MI and PPO-NFF be offered simultaneously through May 2001; 2) adopt the sunset provision that requires workshops and a new docket, if necessary, to perpetuate Rider PPO-MI as written, or with appropriate modifications; 3) adopt the changes to ComEd's original filing consistent with the issues identified by MEC and CMS Marketing; and 4) enter a notice of rulemaking.

In its reply to exceptions, PE Services recommends that the Commission: 1) exclude the HEPO requirement that ComEd keep its Rider PPO-NFF in place indefinitely; 2) include language supporting the MEC-CMS Marketing transition proposal; 3) retain the HEPO requirement that Rider PPO-MI include a May 2001 sunset provision; and 4) include language stating it is an interim order and establishing a schedule for reviewing and modifying the ComEd Rider PPO-MI by May 2001.

As noted above, CILCO also recommends that if the index proposed by ComEd is approved, a one-year "sunset" provision be incorporated in the Commission order. CILCO claims that this provision would enable further analysis, examination and understanding of the Market Index and its applicability as a long-term solution to the Neutral Fact Finder process.

4. Parties Opposing ComEd's Proposal

a. IIEC's Exceptions

In its exceptions, the IIEC argues that ComEd's proposal should be rejected. IIEC notes that it and other parties previously requested that the ComEd schedule be rejected and that a "reasonable schedule accommodating discovery, preparation and filing of direct and rebuttal testimony, cross-examination of witnesses and briefing be established". (IIEC exceptions at 1-2) According to IIEC, under the circumstances, the Commission should "find it impossible to approve a tariff which it may not be able to subsequently modify as circumstances warrant on less than 45 days notice and over the significant due process objections raised by many parties in this proceeding." (IIEC exceptions at 11)

Regarding the 45 day notice requirement in Section 9-201, IIEC urges the Commission to find, "To the extent this issue is before the Commission, the Commission finds, based on the record in this proceeding, there has been no good cause shown to justify the Commission's expedited treatment and waiver of the 45 day notice requirement in this matter."

IIEC says that if the Commission chooses not to reject ComEd's proposal at this time, and wishes to consider the proposal on something other than an "expedited" basis, then the proposed order should become, in effect, an "interim order" and be modified in the manner described by IIEC. In this regard, the IIEC believes the Commission should acknowledge the validity of the arguments raised by IIEC and others and direct that a schedule be established for the consideration of the Company's proposal which will allow parties adequate time for full and complete discovery and presentation of direct and rebuttal testimony, the cross-examination of witnesses and the preparation and filing of briefs in order that the Commission may act upon the Company's proposal by November 1, 2000. (Id. at 7-8)

In its reply to exceptions, ComEd asserts that the schedule adopted in the unique context of this proceeding satisfied both statutory procedural requirements and constitutional due process standards. ComEd says it recognizes, however, that the issues in this docket will remain controversial, even if the Commission gives approval to ComEd's proposal. ComEd says that it is for that reason, if the Commission believes further investigation is necessary, ComEd suggested in its Brief on Exceptions that the Commission approve the market index alternative in an interim order, direct ComEd to file a report at the end of the year, and schedule workshops beginning in the autumn of 2000. The Commission could then, according to ComEd, provide for a hearing in early 2001 in order to allow for a final order in April, 2001. (ComEd reply to exceptions at 15) These comments contained in ComEd's reply to exceptions are intended to respond to all parties that complained about the procedural schedule used in this proceeding, including IIEC, Enron and the AG.

IIEC also argues that if the Commission, in spite of IIEC's objections, decides it will implement ComEd's approach at this time, it should not do so without the modifications to that proposal set forth in Part IV of the Hearing Examiner's Proposed Order. While IIEC does not believe these modifications fully address the concerns it raised about ComEd's proposal, it says adoption of all of the modifications made in the proposed order would be vastly superior to the adoption of ComEd's proposal without such modifications, or with only some of the modifications. If the Commission determines that it cannot make these modifications, then IIEC says ComEd's proposal should be rejected in its entirety. In order to clarify the proposed order's "modifications", IIEC proposes that certain language changes be made in order to clarify and implement those modifications. These proposed language changes are shown on pages 12 and 13 of IIEC exceptions.

b. Enron's Exceptions

In its exceptions, Enron requests that the Commission deny ComEd's petition, consistent with arguments made in its exceptions, or in the alternative, set an appropriate schedule that does not violate the due process rights of the parties to the instant proceeding. Enron further argues that if the Commission does decide to approve an alternative to the NFF, the Commission should require that Edison continue to offer its existing PPO-NFF tariff. (Enron exceptions at 14)

In Enron's view, Edison's proposal requires the Commission to make fundamental legal and policy decisions that will determine the future structure of the electric industry in the State of Illinois using a schedule that was unfair, inappropriate, unrealistic, unworkable, and unheard of in the experience of prior Commission proceedings.

Enron argues that the Commission should not allow Edison to utilize the workshop process as a substitute for the procedural safeguards required by due process. According to Enron, such a practice would undermine the legitimacy of the Commission's decision-making process.

Enron further argues that as desirable as it may be to move to an alternative to the NFF, that movement cannot be undertaken if there are too many uncertainties about the effect of so doing, such as legitimate questions raised in this docket about the liquidity of the markets represented by Altrade and Bloomberg.

c. The AG's Exceptions

In its exceptions and reply to exceptions filed by ComEd, the AG states that the Commission must reject ComEd's request that it approve the implementation of ComEd's market based alternative methodology and associated tariffs. The AG takes exception to the HEPO's failure to issue findings on whether or not ComEd's proposed tariffs under Rider PPO-MI are just and reasonable. The AG asserts that such findings are the minimum findings required by law in order to comply with the Act.

The AG claims that the HEPO fails to explain the "good cause" that warrants the Commission's waiver of 45 day notice rule contained in Section 9-201 of the Act and, therefore, takes exception thereto. The AG takes exception to the fact that the HEPO proposes a decision on the merits in this case, in spite of what its says are numerous misgivings regarding its ability to properly evaluate those merits and explicit acknowledgement of the need for more formal review of the substance of the "so-called" evidence presented in this proceeding.

The AG takes strong exception to the schedule in the instant case, which it asserts illogically, unreasonably, and unlawfully requires parties to submit final arguments to the Hearing Examiner prior to being serviced with testimony that was subsequently entered into the record as evidence. The AG complains that the HEPO failed to rule upon IIEC's Motion, made pursuant to Section 200.640 of the Commissions Rules of Practice, that the Commission take administrative notice of the record in Docket No. 99-0171, which addressed ComEd's prior proposal for an alternative to the Rider PPO-NFF. The AG asserts that its failure to do so deprived the Commission of the opportunity to compare the procedure and record in the instant case with that in the earlier proceeding.

IV. COMMISSION CONCLUSIONS

On March 31, 2000, ComEd filed a petition seeking an order approving the implementation of tariffs attached to its petition by April 27, less than twenty business days after the filing, with these tariffs to become effective May 1, 2000. These tariffs would incorporate a market index based methodology for purposes of determining market value under Section 16-112 of the Act. Among other things, the tariffs provide that peak market values would be determined using forwards transaction prices as listed on Altrade™ and Bloomberg PowerMatch, which Edison characterizes as two real time, online electronic trading exchanges which post forward market prices for the Into ComEd hub. The tariffs would also make certain transitional options available for specified periods of time, such as a "default option" whereby customers would be permitted to continue to pay CTCs based on the current Rider PPO-NFF.

Numerous parties intervened in this proceeding. Some parties, such as PE Services and Nicor Energy, which are ARES, recommend approval of ComEd's proposal subject to certain modifications. Others, such as IIEC, Enron and the AG, oppose the proposal; among other arguments, they claim the schedule in place in this docket does not allow sufficient time for a meaningful analysis of Edison's proposal. Other parties, such as MEC and CMS Marketing, support the proposal on the condition that certain modifications, to which ComEd has agreed, are made. The petition was filed "pursuant to Article IX and Section 16-112" of the Act. Section 16-112 is entitled "Determination of Market Value." Section 16-112(a) provides in part, "The market value to be used in the calculation of transition charges . . . shall be determined in accordance with either (i) a tariff that has been filed by the electric utility . . . pursuant to Article IX of this Act and that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy, or (ii) in the event no such tariff has been placed into effect . . . , or in the event such tariff does not establish market values for each of the years specified in the neutral fact finder [NFF] process described in subsections (b) through (h) of this Section, a tariff incorporating the market values resulting from the . . . NFF process set forth in subsections (b) through (h) of this Section."

Section 16-112(m) states, in part, "[t]he Commission may approve or reject, or propose modifications to, any tariff providing for the determination of market value that has been proposed by an electric utility pursuant to subsection (a) of this Section, but shall not have the power to otherwise order the electric utility to implement a modified tariff or to place into effect any tariff for the determination of market value other than one incorporating the neutral fact-finder procedure set forth in this Section." Normally, when the Commission approves a tariff it has the statutory authority to investigate and modify such tariff at a later date. This authority can be particularly important when a tariff is approved on less than 45 days' notice.

With regard to Article IX, which is entitled "Rates," the basic procedures for proposing changes in tariffs affecting rates, charges or practices relating thereto are set out in Section 9-201. Section 9-201(a) of the Act states in part, "[t]he Commission, for good cause shown, may allow changes [in any rate or other charge] without requiring the 45 days' notice provided for, by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published." The Commission notes that requests for "special permission" to modify a tariff on less than 45 days' notice are far from unheard of at the Commission. However, as observed above, when the Commission approves a tariff it normally has the statutory authority to investigate and modify such tariff at a later date, and the Commission believes this authority can be particularly important when a tariff is approved on less than 45 days' notice.

The Commission notes that several parties object to the procedure by which ComEd has attempted to implement its proposal in this proceeding. IIEC, for example, appears to assert that 45 days' notice is always required under Section 9-201 of the Act. While the City acknowledges that 45 days' notice is not necessarily required, it contends that there has not been good cause shown to justify placing the proposed tariffs in effect on an expedited basis. To the extent this issue is before the Commission, the Commission finds, based on the record in this proceeding and subject to the proposed modifications discussed below, that there has been good cause shown to justify the Commission's expedited treatment of this matter.

The Commission is fully aware of the shortcomings attributed to the NFF process. Unfortunately, while ComEd has developed a tariff that has the potential to provide significant benefits to some customers and suppliers, some parties have complained that the time frame proposed by ComEd has provided little time for scrutiny of this tariff by parties and by the Commission. Furthermore, if the tariff is approved as proposed, ComEd says the Commission is precluded by statute from directing ComEd to modify the tariff in the future. Although ComEd says it will provide reports and work with the parties on this issue, the Commission does not find these offers particularly reassuring or convincing in light of ComEd's statement that it is not waiving its right to reject future proposed modifications to Rider PPO-MI.

In any event, having reviewed the record in this case, the Commission finds that ComEd should be authorized to implement its proposed market index based tariff, subject to the modifications set forth below. Edison claims its proposal is superior to the current NFF methodology for purposes of determining market value, in that it more accurately reflects activity in the relevant regional market, provides visible and current price signals, and enables better forecasting of future market values. Further, ComEd presented information intended to show that the increased market values using its proposed method will reduce annual transition charges and increase PPO prices over the summer months, as compared to the NFF approach, better aligning these charges with actual market data. In addition, several parties, including certified ARES, have indicated that ComEd's proposal has merit when compared to market values established using the NFF methodology.

Based on the information presented, the Commission believes it has been shown that ComEd's proposal would likely perform better in these respects than does the NFF methodology. However, the Commission also believes there should be some means in place by which this proposal can be formally reviewed in the future, particularly considering the short review period in this case along with the substantive concerns expressed by other parties, such as IIEC's primary concern regarding the potential "thinness" of the market represented by Altrade and Bloomberg PowerMatch. The concerns raised by several parties regarding the potential for manipulation and the unregulated nature of these internet based markets further support the Commission's conclusion that there should be an additional opportunity for the Commission to formally review the merits of ComEd's proposal and then determine if it should be adopted on a long-term basis.

In order to mitigate the concerns of the parties and the Commission described above, the Commission is of the opinion that some modifications to ComEd's proposal would be appropriate. Before identifying the specific modifications, and in connection therewith, the Commission first notes, as explained above, that ComEd is also proposing various transitional provisions in both its tariffs and testimony. For example, under ComEd's proposal, customers will be given the choice to remain with charges that reflect the NFF methodology for the remainder of 2000 or move to those which are set using the market index methodology.

In an effort to establish an index-based market value tariff suitable for long term fair competition and to establish a process which is designed to fairly and accurately reflect the market value of power and energy, the Commission directs all interested parties to actively participate in Commission sponsored workshops as scheduled by the Commission. These workshops will consider future modifications and improvements to the index-based market value methodology and are intended to result in recommendations to the Commission for possible modification to the index-based market value tariff. These recommendations should address the implementation of an index-based market value tariff suitable for long term fair competition in a restructured electric industry. In the event the parties agree that certain proposed modifications would be appropriate, then the interim order process approved herein would provide a means of presenting those proposed modifications or recommendations to the Commission for its consideration and action.

The Commission also notes that CILCO recommends a one-year sunset provision be included in the final order, and that several other parties also propose that a sunset provision be approved. While IIEC does not support implementation of the ComEd alternative to the NFF even if it were placed into effect for a defined period of time, IIEC says that under any circumstance, the tariff should only be in effect for a defined period of time not to exceed one year given the uncertainties associated with any approach.

With regard to the specifics of its proposed modifications to ComEd's proposed Rider PPO-MI, the Commission proposes that an interim order be entered at this time, and that workshops be initiated, for the purposes and in the manner set forth above, in order to consider further modifications and improvements to Rider PPO-MI prior to the 2001 summer period. Except as otherwise found appropriate herein, the Commission proposes no further modification to this tariff. As noted above, ComEd says the Commission is precluded by statute from ordering ComEd to modify any provision of Rider PPO-MI once it is approved. In light of the expedited schedule in this proceeding, and upon consideration of the record in this proceeding and the alleged lack of authority of the Commission to revisit this tariff, the Commission believes that approval of ComEd's proposal without such a modification would not be an appropriate result. This proposed modification will not eliminate any of the purported benefits which ComEd attributes to proposed Rider PPO-MI.

The Commission accepts ComEd's proposal that existing PPO customers be given a 45 day window of opportunity to choose to either remain with charges that reflect the NFF methodology for the remainder of 2000 or move to those set forth using the market index methodology described in this Order at pages 6-7 and outlined in greater detail in ComEd's Petition and testimony of ComEd witness Crumrine. (See Petition at 5, Crumrine Direct at 16-17)

On a related point, the Commission also finds a proposed modification by MEC and CMS Marketing, which grants additional time for customers to make PPO and CTC selections, to be reasonable. This modification is supported by several parties, including ComEd, is not opposed by any party and is intended to be beneficial to all customers and retail electric suppliers.

In the event that ComEd accepts the proposed modification to Rider PPO-MI, ComEd is directed to modify Rate CTC, Customer Transition Charge, to comply with that modification as well as the corresponding modification to Rider PPO-NFF that would result.

With regard to ComEd's so-called wholesale offer, ComEd also proposes, as explained more fully above, to offer to all retail electric suppliers serving retail load in ComEd's territory, for a limited time, a wholesale full-requirements service priced at the market values determined using the Commission-approved NFF and market-based methodologies. ComEd says this offer is proposed in order to satisfy certain concerns raised during the workshops, and that energy under this offer would be as firm as native load. According to ComEd, this offer is contingent upon a Commission finding that ComEd's offer in conjunction with its proposed alternative market-based methodology is just and reasonable and would promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers. Subject to the other determinations made in this order, the Commission hereby finds that ComEd's wholesale offer will promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having reviewed the record herein, is of the opinion and finds that:

(1) ComEd is an Illinois corporation engaged in the business of furnishing electric service in the State of Illinois, and is a public utility as defined in Section 3-105 of the Public Utilities Act and an electric utility as defined in Section 16-102 of the Act;

(2) the Commission has jurisdiction over ComEd and of the subject matter of this docket;

(3) the statements of fact set forth in the prefatory portions of this Order are supported by the record and are hereby adopted as findings of fact;

(4) ComEd is authorized to file tariffs which contain the Commission's proposed modifications as are described and found just, reasonable and appropriate in the "Commission Conclusions" section of this Order above, with such tariffs to be effective May 1, 2000; absent such modifications, ComEd's proposal is rejected and the currently effective tariffs remain in place.

IT IS THEREFORE ORDERED by the Commission that ComEd is authorized to file tariffs consistent with the determinations and findings made in this Order, and containing the proposed modifications found appropriate in this Order, with such tariffs to be effective May 1, 2000; absent such modifications, ComEd's proposal in this docket is rejected and the currently effective tariffs remain in place.

IT IS FURTHER ORDERED that any and all requests or objections not hereto fore specifically ruled upon are hereby deemed disposed of in a manner consistent with the ultimate conclusions contained in this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.800, this Interim Order is not final; it is not subject to the Administrative Review Law.

By order of the Commission this 27th day of April, 2000.

(SIGNED) RICHARD L. MATHIAS

Chairman

(S E A L)